

BRANCART & BRANCART  
 Christopher Brancart (CBN 128475)  
*cbrancart@brancart.com*  
 Liza Cristol-Deman (CBN 190516)  
*lcristoldeman@brancart.com*  
 Post Office Box 686  
 Pescadero, CA 94060  
 Tel: (650) 879-0141  
 Fax: (650) 879-1103

FAIR HOUSING OF MARIN  
 Casey Epp (CBN 284139)  
*Casey@fairhousingmarin.com*  
 1314 Lincoln Avenue, Suite A  
 San Rafael, CA 94901  
 Tel: (415) 457-5025  
 Fax: (415) 457-6382

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

**ELIZABEL HERNANDEZ, ELIDA  
 CALDERON, and FAIR HOUSING OF  
 MARIN, a Not-for-Profit Corporation,**

**Plaintiffs,**

**vs.**

**VICTOR JUAN UNTIVEROS and 4TH  
 & ELM, LLC,**

**Defendants.**

**Case No. 15-cv-04523-KAW**

**JOINT RULE 26(f) REPORT AND CASE  
 MANAGEMENT STATEMENT**

Case Management Conference:

Date: January 12, 2016

Time: 1:30 p.m.

Place: Ronald Dellums Federal Building,  
 1301 Clay Street, Oakland, CA

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local Rule 16-9, and the standing order for all judges of the Northern District of California, the plaintiffs and defendants hereby submit their joint Rule 26 report, case management statement, and discovery plan.

**1. Jurisdiction and Service:**

Plaintiffs contend and defendants do not dispute that this Court has federal question jurisdiction over plaintiffs' claims under the federal Fair Housing Act, 42. U.S.C. section 3601 et seq., plaintiffs' federal constitutional claims, and supplemental jurisdiction over plaintiffs' state

**JOINT CASE MANAGEMENT STATEMENT AND RULE 26 REPORT - Case No. 15-cv-04523-KAW**

1 law claims.

2 All defendants have been served with the summons and complaint. Defendant Victor  
3 Juan Untiveros was served with the summons and complaint on November 23, 2015, but has not  
4 yet filed a responsive pleading.

5 **2. Facts:**

6 **Plaintiffs' Allegations:** This is a fair housing case brought under the federal Fair  
7 Housing Act and related state laws. Plaintiffs are residents at the Elm Drive Apartments, a 40-  
8 unit apartment complex located at 1145 Elm Drive, in Novato, California. Until approximately  
9 November 2015, when the property was sold, defendants 4th and Elm LLC owned the Elm Drive  
10 Apartments.

11 Plaintiffs allege that defendant Victor Juan Untiveros, a former resident, maintenance  
12 person and assistant manager at the Elm Drive Apartments, engaged in sexual harassment of  
13 female tenants. Plaintiffs Elizabel Hernandez and Elida Calderon are two of the female tenants  
14 who experienced sexual harassment.

15 For example, Mr. Untiveros frequently asked plaintiff Elizabel Hernandez personal  
16 questions and made lewd sexual remarks about her body. He repeatedly asked her to marry him  
17 and to have sexual relations with him. He called her a “slut” and told her that she could not have  
18 any men visiting her apartment.

19 Mr. Untiveros entered plaintiff Elida Calderon’s apartment without notice on several  
20 occasions. On one occasion, he used his master key to enter her apartment while she was home  
21 alone. On or around April or May 2014, Mr. Untiveros told Ms. Calderon that he would “help”  
22 her with any problems with the rent or with management if she would agree to be “affectionate”  
23 with him, or words to that effect. Ms. Calderon replied that she was not interested in the offer.

24 On numerous occasions, Mr. Untiveros threatened to call the U.S. Department of  
25 Immigration and Customs Enforcement (“ICE”). Mr. Untiveros would threaten to call ICE when  
26 Ms. Calderon requested repairs to her apartment, and said if she called the police or tried to sue  
27 him, he would report her family to ICE. Mr. Untiveros claimed to be on the telephone with his  
28 “friends at ICE” and made comments to Ms. Calderon, such as, “I’m friends with the sheriff” and

1 “the sheriff will take you away,” and “be careful because they’ll call immigration,” or words to  
2 that effect.

3 Plaintiff Fair Housing of Marin (“FHOM”) received complaints from Ms. Hernandez and  
4 Ms. Calderon separately in or around October 2014. FHOM counseled Ms. Hernandez and Ms.  
5 Calderon regarding their legal rights, and investigated defendants’ discriminatory housing  
6 practices. FHOM had previously received a complaint from another tenant at the Elm Drive  
7 Apartments alleging sexual harassment by Mr. Untiveros. Throughout 2014 and 2015, FHOM  
8 undertook an educational campaign to alert women and service providers in the community about  
9 their right to live in an environment without sexual harassment.

10 **Defendants' Allegations:**

11 Defendant 4th & Elm, LLC deny the allegations and are in the process of investigating  
12 same.

13 **3. Legal Issues:**

14 **Plaintiffs' legal contentions:**

15 Plaintiffs contend that defendants have violated the Fair Housing Act, 42 U.S.C. section  
16 3604 (b), (c), and 3617, by committing the following discriminatory housing practices:

- 17 a. Imposing different terms, conditions, or privileges, or denying or limiting services  
18 or facilities in connection with the rental of a dwelling because of sex;
- 19 b. Threatening, intimidating, or interfering in the use or enjoyment of a dwelling  
20 because of sex;
- 21 c. Making statements indicating a limitation, preference, or discrimination in the  
22 rental of a dwelling based on sex;
- 23 d. Engaging in unwelcome sexual advances, requests for sexual favors, and other  
24 verbal or physical conduct of a sexual nature such that submission to the conduct, either  
25 explicitly or implicitly, was made a term or condition relating to the rental of a dwelling or the  
26 provision of benefits in the connection therewith;
- 27 e. Engaging in unwelcome sexual advances, requests for sexual favors, and other  
28 verbal or physical conduct of a sexual nature such that the conduct had the effect of creating an

1 environment which a reasonable woman would consider intimidating, hostile, offensive, or  
2 otherwise making the tenancy significantly less desirable, in connection with the rental of a  
3 dwelling or the provision of benefits or services in connection therewith;

4 f. Harassing plaintiff Elizabel Hernandez in connection with the rental of a housing  
5 accommodation; and,

6 g. Harassing plaintiff Elida Calderon in connection with the rental of housing  
7 accommodation.

8 The same conduct violates the California Fair Employment and Housing Act,  
9 Government Code §§ 12927, 12955, the California Unruh Civil Rights Act, Civil Code § 51-52,  
10 and the California Bane Act § 52.1. Plaintiffs contend that the defendant's conduct also  
11 constitutes unlawful harassment in violation of Civil Code § 51.9, and violates the Ralph Act,  
12 Civil Code § 51.7.

13 Plaintiffs also contend that 4th and Elm LLC, as the owners of the apartments, are either  
14 directly or vicariously liable for the conduct of their agents.

15 In addition, defendants' conduct constitutes a breach of the implied covenant of quiet use  
16 and enjoyment, invasion of privacy, and negligence.

17 **Defendants' legal contentions:**

18 Defendant 4th & Elm, LLC deny the allegations and are in the process of investigating  
19 same.

20 **4. Motions:**

21 No motions are pending. At this early stage in the case, plaintiffs and defendants do not  
22 anticipate any imminent motions.

23 **5. Amendment of Pleadings:**

24 The parties propose a deadline of March 31, 2015 to amend the pleadings.

25 **6. Evidence Preservation:**

26 Plaintiffs and defendants affirm that they are aware of the duty to preserve all documents  
27 and things relevant to the facts alleged in this case, including emails and other electronic  
28 information.

1           **7. Disclosures:**

2           Plaintiffs and defendants propose a deadline of January 4, 2016 to serve Rule 26 Initial  
3 Disclosures.

4           **8. Discovery:**

5           The parties have discussed the items set forth in Rule 26(f)(3) and developed a plan for  
6 discovery, as follows:

7           **(A) Initial Disclosures.** Plaintiffs and defendants propose a deadline of January 4, 2016  
8 to exchange the required initial disclosures pursuant to Rule 26(a).

9           **(B) Discovery Scope and Schedule.** Plaintiffs plan to serve written discovery on matters  
10 relevant to the allegations and defenses, including interrogatories, requests for production of  
11 documents, and requests for admissions. Plaintiffs intend to take depositions of defendants after  
12 plaintiffs receive responses to the written discovery. Plaintiffs will conduct additional written  
13 discovery and third party depositions if necessary.

14           Defendants intend to serve written discovery followed by the depositions of plaintiffs and  
15 disclosed/discovered third party fact witnesses.

16           The parties agree to work cooperatively to schedule depositions on mutually convenient  
17 dates.

18           No special limits or phases are necessary in this case.

19           **(C) ESI.** To the extent that any ESI will be produced in this case, the parties will print  
20 hard copies or produce them as pdf files. Upon request, the parties agree to produce ESI in its  
21 native format. Defendants assert that they have no ESI.

22           **(D) Privileges:** The parties are not aware of any potential disputes, but agree to produce  
23 privilege logs for any privileged documents pursuant to Fed.R.Civ.P. 26(b)(5).

24           **(E) Limitations.** The parties do not propose any modifications to the rules governing the  
25 maximum number of discovery requests and depositions.

26           **9. Class Actions:** Not applicable.

27           **10. Related Cases:** After filing this case, plaintiffs' counsel received a courtesy copy  
28 of a separate case filed by plaintiff Elizabel Hernandez and four other tenants at the Elm Court

1 Apartments, in Superior Court for the County of Marin, Case No. CV-15014142. That complaint  
2 was filed on November 13, 2015, and alleges violation of the warranty of habitability and related  
3 causes of action. Plaintiffs in that case are represented by different counsel.

4 **11. Relief:** The individual plaintiffs seek compensatory damages, punitive damages,  
5 statutory damages and civil penalties pursuant to the Unruh Civil Rights Act, Bane Act, Ralph  
6 Act, and California Civil Code and affirmative injunctive relief.

7 Plaintiff Fair Housing of Marin seeks affirmative injunctive relief.

8 All plaintiffs seek to recover their attorneys' fees and costs pursuant to the Fair Housing  
9 Act, FEHA, the Unruh Act, and other claims.

10 **12. Settlement and ADR:**

11 Plaintiffs and defendants agreed on early mediation, but did not come to an agreement  
12 about whether to use the court's ADR program or a private mediator. Plaintiffs would like to use  
13 the court's mediation panel. Defendants wish to use an outside mediator.

14 **13. Consent to Magistrate Judge for All Purposes:**

15 Plaintiffs and defendants have consented to have a magistrate judge conduct all further  
16 proceedings, including trial and entry of judgment.

17 **14. Other References:**

18 This case is not suitable for reference to binding arbitration, a special master, or the  
19 Judicial Panel on Multidistrict Litigation.

20 **15. Narrowing of Issues:**

21 At this early stage of the litigation, the parties are not aware of how the case may be  
22 narrowed or whether bifurcation may be appropriate.

23 **16. Expedited Schedule:**

24 This is not the type of case that can be handled on an expedited basis with streamlined  
25 procedures.

26 **17. Scheduling:** The parties have agreed to propose the following schedule to the  
27 court:  
28

Event	Date
Non expert Discovery Cut Off	October 3, 2016
Expert designation	November 7, 2016
Rebuttal expert designation	December 5, 2016
Expert Discovery Cut Off	December 30, 2016
Hearing of Dispositive Motions	January 19, 2017 at 11:00 a.m.
Pretrial Conference	Tuesday, February 28, 2017 at 3:00 p.m.
Trial Commences	March 13, 2017

**18. Trial:**

The parties filed a demand for trial by jury. The parties anticipate that the trial will last four days.

**19. Disclosure of Non-party Interested Entities or Persons:**

The following disclosure was made in plaintiffs' certification of interested entities:

"The undersigned, counsel of record for plaintiffs Elizabel Hernandez, Elida Calderon and Fair Housing of Marin, certifies that the following have an interest in the outcome of this case:

- Counsel of record for plaintiffs
- Elizabel Hernandez, Elida Calderon, and Fair Housing of Marin, plaintiffs;
- Victor Juan Untiveros, 4th & Elm, LLC, defendants."

The following disclosure was made in defendants' certification of interested entities:

"Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties: James Anthony Cassin and Karen Ellen Cassin, The Cassin 2003 Family Trust 1-28-2003"

**20. Professional Conduct:**

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

**21. Other:**

1 The parties agreed that all documents, including pleadings and discovery, may be served  
2 via email.

3 The parties have agreed to number all deposition exhibits consecutively and continuously  
4 across multiple depositions.

5 *I, Liza Cristol-Deman, hereby attest that all signatories whose names appear below have*  
6 *consented to the filing of this document.*

7 Respectfully submitted,

8 BRANCART & BRANCART

9 Dated: December 29, 2015

10 /s/ Liza Cristol-Deman  
11 Liza Cristol-Deman  
12 Attorney for All Plaintiffs

13 Dated: December 29, 2015

14 FAIR HOUSING OF MARIN

15 /s/ Casey Epp  
16 Casey Epp  
17 Attorneys for All Plaintiffs

18 STRATMAN, PATTERSON & HUNTER

19 Dated: December 29, 2015

20 /s/ P. Richard Colombatto  
21 P. Richard Colombatto  
22 Attorneys for Defendant 4th & Elm, LLC  
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